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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 SAN DIEGO UNIFIED PORT
11 DISTRICT,

12 Plaintiff,

13 v.

14 NATIONAL UNION FIRE
15 INSURANCE COMPANY OF
16 PITTSBURG, PA,

17 Defendant.

Case No.: 15cv1401-BEN-MDD

**ORDER GRANTING
PLAINTIFF'S EX PARTE
APPLICATION TO BAR
SEPARATE VIDEOTAPING OF
DEPOSING ATTORNEY AT
DEPOSITIONS SET FOR
AUGUST 28-31, 2017**

[ECF NO. 56]

18 Before this Court is Plaintiff's Ex Parte Application to Bar Separate
19 Videotaping of Deposing Attorney filed on August 21, 2017. (ECF No. 56).
20 Considering that depositions pursuant to the challenged protocol are
21 scheduled to begin Monday, August 28, 2017, the Court finds it appropriate
22 that Plaintiff moved ex parte. Defendant was ordered to and did respond in
23 opposition on August 24, 2017. (ECF No. 59). As provided below, Plaintiff's
24 Motion is **GRANTED**. Defendant is precluded from using a second camera to
25 videotape the deposing counsel.
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Case law, as the parties note, is sparse. Most of the case law addressing a second camera focused on the deposing attorney arise in the context of multi-district litigation and even in that context, “the use of multiple cameras during depositions in an MDL case is therefore, at best, disputed.” *See In re Xarelto (Rivaroxaban) Prods. Liab. Litig.*, 2016 U.S. Dist. LEXIS 8233 *7-8, MDL No. 2592 Section L (E.D. La. January 25, 2016)(collecting cases). The *Xarelto* Court allowed for the use of one additional camera in the discovery phase of an MDL action:

Id. at *8-9.

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1 deposition. *Zottola v. Anesthesia Consultants of Savannah, PC*, 2012 WL
2 6824150 *7, No. CV 411-154 (S.D. Ga. June 7, 2012). Defendant cites to a
3 case in this Court, *Insurance Co. of the State of Pennsylvania, et al., v. City of*
4 *San Diego*, Case No. 02-cv-0693-BEN-CAB (S.D. Cal.). Defendant did not
5 supply a copy of the relevant order and did not cite to a particular docket
6 entry. That case has 530 docket entries and the Order relied upon by
7 Defendant is not obvious.

8 What is clear is that it is within the discretion of the Court to allow or
9 disallow the second camera in this case. The Court finds that the use of a
10 second camera focused upon the deposing attorney is not necessary or
11 appropriate in this case. The Court finds that it is more likely that the
12 second camera is intended to intimidate the deposing attorney rather than to
13 better preserve the deposition for ultimate use at trial. *See In re Xarelto*,
14 2016 U.S. Dist. LEXIS 8233 *7.

15 **IT IS SO ORDERED.**

16 Dated: August 25, 2017

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18 Hon. Mitchell D. Dembin
19 United States Magistrate Judge
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